IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 510 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

D J PARMAR POLICE SUB INSPECTOR

Versus

STATE OF GUJARAT

Appearance:

MR JB PARDIWALA for Petitioners No. 1-4

MR LR POOJARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision:18/19-12-2001

ORAL JUDGEMENT

Heard the learned advocates.

This Revision Application preferred under Section

397 read with Section 401 CrPC arises from the judgment and order dated 21st September, 2000 passed by the learned Judicial Magistrate, First Class, Chanasma below Application Exh. 30 in Criminal Case No.95 of 1999. The petitioners before this Court are four of the accused i.e., the accused nos. 1 to 4 in the said Criminal Case No.95 of 1999. All the four petitioners are Police Officers as defined in Section 2 (11) of the Bombay Police Act, 1951. The accused are alleged to have committed offence punishable under Sections 120-B, 193, 196, 199, 200, 201, 203, 217, 218, 221, 465, 471, 504 and 506 (1) IPC.

It is alleged that on 28th August, 1991, the petitioner no. 1, then a Police Sub-Inspector, Harij Police Station was driving a motor cycle at around 11 o'clock at night bearing no. GJ-2-4955 rashly and negligently. At that time he hit the door of a stationary car parked on the road side. On account of the said accident, one Police Head Constable Shri Ram Dayal (PW-4) received grievous injuries. The motor cycle was also thrown off. The driver-the petitioner no. 1 and the pillion rider, PW-9 were thrown off and were injured. Shri Ram Dayal (PW-4) was taken to Patan Hospital and was admitted as an Indoor patient. At the time, the then Sub-Divisional Police Officer, the petitioner no. 2 approached the said Shri Ram Dayal in the hospital and instructed him not to file complaint in respect of the said accident and the injuries received by him. The petitioner no. 2 also informed that a complaint was already registered in Chanasma Police Station. It is alleged that a false complaint was lodged against the accused no. 7 (a private individual). The matter was brought before the learned Magistrate, Chanasma. The accused no.7 had pleaded guilty. He was convicted and fined. Thus, the petitioners are alleged to have given wrong information to the learned Magistrate, kept back the correct number of the motor cycle involved in the accident and concealed the true facts from the Court. On an application made by PW-4 Shri Ram Dayal investigation was made by C.I.D Crime, Gandhinagar and the complaint in this respect was lodged in the Gandhinagar Zone Police Station on 10th February, 1994. The offence has been registered in the Court of learned Judicial Magistrate, First Class, Chanasma, as abovereferred Criminal Case No. 95 of 1999. Pending the said proceeding, the present petitioners-the accused nos. 1 to 4 respectively made application Exh. 30 seeking discharge on the ground that the learned Magistrate was barred from taking cognizance of the said offence under Section 195 CrPC and Section 161 of the Bombay Police

Act, 1951. The learned Magistrate under his judgment and order dated 21st September, 2000 was pleased to reject the said application. Feeling aggrieved, the said accused have preferred the present revision application.

Mr. Pardiwala has submitted that indisputably the offences in question have been alleged to have been committed in relation to the criminal proceedings lodged against the accused nos. 6 and 7 wherein the said accused had pleaded guilty. The offence alleged to have been committed being punishable under Section 193 CrPC, the learned Magistrate was barred under Section 195 CrPC from taking cognizance thereof unless the complaint were lodged by the concerned Court or by the Court to which the said court is subordinate. He has also submitted that all the four petitioners are police officers who are alleged to have done wrong by an act done in colour of their duty, no prosecution, therefore, could have been lodged against the petitioners after the expiry of period of one year from the date of the act complained off. Section 161 of the Bombay Police Act, 1951 expressly bars entertainment of such prosecution after more than one year from the date of the act complained of. In the present case, admittedly, the act complained of had been committed on 29th August, 1991 or thereabout, while the complaint has been lodged in the month of February, 1994 i.e., more than two years from the date of the act complained of. No prosecution, therefore, should have been entertained against the petitioners. The petitioners are, therefore, entitled to be discharged as prayed for. In support of his contentions Mr. Pardiwala has relied upon Sections 195 CrPC and Section 161 of the Bombay Police Act, 1951. He has also relied upon the judgments of the Hon'ble Supreme Court in the matters of Virupaxappa Kadampur v. State of Mysore [AIR (1963) SC 849]; of M.L Sethi v. R.P Kapur & Anr., [AIR (1967) SC 528] and of K.K Patel & Anr. vs. State of Gujarat & Anr., [2001 SCC (Cri.) 200]. Mr. Pardiwala has also relied upon the judgment of the Bombay High Court in the matter of Amimiya Imammiya & Ors. v. Emperor [49 Cr.L.J 216]; of Supreme Court in the matter of Jamuna Singh & Ors. v. Bhadai Shah [AIR (1964) SC 1541] of Bhanuprasad Hariprasad Dave & Anr. v. State of Gujarat [1968 GLR p-853] and of A. Varghese & Anr. v. Chellappan [(1998) Cr.L.J. 1328].

In the matter of Virupaxappa Veerappa Kadampur [Supra], Mr. Pardiwala has relied upon the discussion in paragraphs 9 & 10. In the said paragraphs, the Hon'ble Court has discussed the scope and ambit of the expression, `under colour of duty' or `under colour of

office'. The Hon'ble Court has referred to the Wharton's Law Lexicon, 14th Edition and the Judicial Dictionary. The said paragraphs 9 & 10 read as under :-

"The expression `under colour of something' or `under colour of duty', or `under colour of office', is not infrequently used in law as well as in common parlance. Thus in common parlance when a person is entrusted with the duty of collecting funds for, say, some charity and he uses that opportunity to get money for himself, we say of him that he is collecting money for himself under colour of making collections or a charity. Whether or not when the act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words "under colour" in s. 161(1) to include this sense. It is helpful to remember in this connection that the words `colour of office' has been stated in many law lexicons- to have the meaning just indicated above. Thus in Wharton's Law Lexicon, 14th Edition, we find at p. 214 the following :

"Colour of office"

"When an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour."

In Stroud's judicial Dictionary, 3rd Edition, we find the following at p. 521 :-

Colour : `Colour of office' is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office is but a veil to the falsehood, and the thing is grounded upon Vice, and the Office is as a shadow to it. But `by reason of the office' and "by virtue of the office' are taken always in the best part."

It appears to us that the words "under colour of duty" have been used in s. 161 (1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police-officer) prepares a false Panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary" `as a veil to his falsehood." The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty"."

In the matter of M.L Sethi [Supra], the Hon'ble Court was considering the scope and ambit of the expression, `in, or in relation to' occurring in clause (b) of sub-section (1) of Section 195. The Court has held that, "when examining the question whether there is any proceeding in any Court, there are three situations that can be envisaged. One is that there may be no proceeding in any Court at all. The second is that a proceeding in a Court may actually be pending at the point of time when cognizance is sought to be taken of the offence under Section 211 IPC. The third is that, though there may be no proceeding pending in any Court in which or in relation to which the offence under Section 211 IPC could have been committed, there may have been a proceeding which had already concluded and the offence under Section 211 may be alleged to have been committed in, or in relation to, that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under Section 195 (1)(b) would come into operation. If there be a proceeding actually pending in any Court and the offence under Section 211 IPC is alleged to have been committed in relation to that proceeding, Section 195 (1) (b) would clearly apply. Even if there be a case where there was, at one stage, a proceeding in any Court which may have concluded by the time the question of applying the provisions of Section 195(1)(b) arises, the bar under that provision would apply if it is alleged that the offence under Section 211 IPC was committed in or in relation to that proceeding. The fact that the proceeding had concluded would be immaterial because Section 195 (1)(b) does not require that the proceeding in any court must actually be pending at the time when the question of applying this bar arises."

In the matter of Jamuna Singh & Ors. [Supra], the Hon'ble Supreme Court has held that, "it is clear however and indeed not disputed that a case can be said

to be instituted in a Court only when the Court takes cognizance of the offence alleged therein." In the matter of Bhanuprasad Hariprasad Dave & Anr. [Supra], the Hon'ble Supreme Court has held that, "..under Section 161 of the Bombay Police Act, 1951, the words `under colour of duty' have been used to include acts done under the cloak of duty, even though not by virtue of duty; that when the head constable prepared a false report he was using the existence of his legal duty as a cloak for his corrupt action and that, therefore, the act thus done in dereliction of his duty must be held to have been done `under colour of duty'." In the matter of K.K Patel [Supra] also, the acts alleged to have been done by the accused Police Officers were held to be done in colour of duty. Thus, the prosecution lodged more than one year after the date of the alleged act was held to be barred by Section 161 of the Bombay Police Act, 1951. In the matter of Amimiya Imammiya & Ors. [Supra], similar was the question before the Bombay High Court. The firing ordered by the accused Police Officer was held to be an act done under the colour of office. The Court observed that, `hence, in this case even if the accused could have dealt with the unlawful assembly in more humane manner, without having recourse to the firing, yet there is no doubt that the firing was ordered under the colour of office, however, unreasonable it might be.' In the matter of A Varghese & Anr. [Supra], while considering the bar against cognizance of an offence imposed under Section 195 CrPC, the Hon'ble Madras High Court held that, "as far as the offence punishable under Secs. 193 & 211 of Indian Penal Code are concerned, the learned Magistrate cannot take cognizance except on the complaint in writing of that Court or of some other Court to which that Court is subordinate."

Mr. Poojari, the learned APP has contested the petition and has supported the impugned judgment of the learned Magistrate.

Two questions fall for my consideration : First, whether the learned Magistrate could lawfully have taken cognizance of the offence alleged to have been committed by the petitioners herein and two others inspite of the legal bar imposed under Section 195 CrPC. Second, whether the petitioners can be said to have committed offence alleged to have been committed by them in colour of their duty and whether the prosecution in question could have been lodged against the petitioners more than one year after the date of the alleged wrong done by the petitioners.

So far as the present case is concerned, it is clause (b) of sub-section (1) of Section 195 which is relevant. Section 195 (1)(b) CrPC reads as under :-

`195. (1) No Court shall take cognizance-

(a) xx xx xx xx

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence, in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

Thus, when any person is alleged to have committed any of the offences punishable under any of the above referred provisions of the Indian Penal Code, cognizance of such offence cannot be taken except otherwise on a complaint in writing of the Court in respect of which the alleged offence has been committed or of some other court to which such court is subordinate. In the present case, the petitioners are alleged to have committed offences punishable under Sections 102-B, 187, 189, 191, 193, 201, 218, 219, 465, 471, 504, 506 read with Section 114 IPC. Except the offence punishable under Section 193 IPC none of the said offences is covered by above referred clause (b) of sub-section (1) of Section 195. In otherwords, the bar

imposed under Section 195 CrPC shall, if at all, operate against the offence alleged to have been committed under Section 193 IPC. Section 193 IPC provides for punishment for intentionally giving false evidence at any stage of a judicial proceeding or for fabricating false evidence for the purpose of being used at any stage of judicial proceeding. If at all the argument that the learned Magistrate was barred from taking cognizance of the offence were accepted, such bar would operate against taking cognizance of the offence punishable under Section 193 IPC alone. I do not agree with the contention of Mr. Pardiwala that all the offences are so integrally connected that if the accused are discharged for one offence, they have to be discharged in respect of the other offences also. In the event the petitioners are discharged for offence punishable under Section 193 IPC, they can still be prosecuted for other offences alleged to have been committed by them. In so far as offence punishable under Section 193 IPC is concerned, the complaint is not explicit as to which of the petitioners had given false evidence or had fabricated false evidence within the meaning of Section 193 of Indian Penal Code. The question, therefore, can be determined only after further evidence is led in the matter. At this stage, neither of the petitioners can be conclusively said to have committed offence punishable under Section 193 IPC which should entitle such petitioner to discharge from the offence punishable under Section 193 IPC. The question, therefore, requires to be decided by the learned Magistrate after further evidence is recorded.

As noted by the court below, the incident of accident had occurred within the jurisdiction of Chanasma Police Station. At the relevant time, the petitioner no. 1 was posted as Police Sub-Inspector at Harij Police Station; the petitioner no. 2 was posted as a Deputy Superintendent of Police, Patan; the petitioners nos. 3 & 4 were the Police Inspector and the Police Sub-Inspector respectively at Chanasma Police Station. It is not shown by the petitioners nos. 1 & 2 that it was their official duty to act in respect of the said incidence of accident. Any wrong done by them, therefore, cannot be said to have been done in colour of their duty. The said petitioners, therefore, cannot avail of the benefit of the limitation imposed under Section 161 of the Bombay Police Act, 1951. As far as petitioners nos. 3 & 4 are concerned, they are not only alleged to have filed a fabricated complaint with a view to screen the petitioner no. 1, they are also alleged to have committed offences
506 IPC. In no circumstance, the said offences could

have been committed by the said petitioners in colour of their duty. It, therefore, cannot be said that any prosecution against the said petitioners is barred by limitation imposed under Section 161 of the Bombay Police Act, 1951.

In view of the above discussion, I am of the view that the claim for discharge made by the petitioners has rightly been rejected by the learned Magistrate. The Revision Application is dismissed. Rule is discharged. Interim stay is vacated.

[Ms. R.M Doshit, J.]

Prakash*